

## Nuclear Regulatory Commission

## § 9.204

information or produce any material acquired as part of the performance of that employee's official duties or official status without prior approval of the appropriate NRC official. When the demand is for material contained in the files of the Office of the Inspector General or for information acquired by an employee of that Office, the Inspector General is the appropriate NRC official. In all other cases, the General Counsel is the appropriate NRC official.

[55 FR 33648, Aug. 17, 1990]

### § 9.202 Procedure in the event of a demand for production or disclosure.

(a) Prior to or simultaneous with a demand upon an employee of the NRC for the production of material or the disclosure of information described in § 9.200, the party seeking production or disclosure shall serve the General Counsel of the NRC with an affidavit or statement as described in paragraphs (b) (1) and (2) of this section. Except for employees in the Office of Inspector General, whenever a demand is made upon an employee of the NRC for the production of material or the disclosure of information described in § 9.200, that employee shall immediately notify the General Counsel. If the demand is made upon a regional NRC employee, that employee shall immediately notify the Regional Counsel who, in turn, shall immediately request instructions from the General Counsel. If the demand is made upon an employee in the Office of Inspector General, that employee shall immediately notify the Inspector General. The Inspector General shall immediately provide a copy of the demand to the General Counsel, and as deemed necessary, consult with the General Counsel.

(b)(1) If oral testimony is sought by the demand, a summary of the testimony desired must be furnished to the General Counsel by a detailed affidavit or, if that is not feasible, a detailed statement by the party seeking the testimony or the party's attorney. This requirement may be waived by the General Counsel in appropriate circumstances.

(2) The General Counsel may request a plan from the party seeking discovery of all demands then reasonably

foreseeable, including but not limited to, names of all NRC personnel from whom discovery is or will be sought, areas of inquiry, length of time away from duty involved, and identification of documents to be used in each deposition, where appropriate.

(c) The Inspector General or the General Counsel will notify the employee and such other persons, as circumstances may warrant, of the decision on the matter.

[50 FR 37645, Sept. 17, 1985, as amended at 55 FR 33648, Aug. 17, 1990]

### § 9.203 Procedure where response to demand is required prior to receiving instructions.

If a response to the demand is required before the instructions from the Inspector General or the General Counsel are received, a U.S. attorney or NRC attorney designated for the purpose shall appear with the employee of the NRC upon whom the demand has been made, and shall furnish the court or other authority with a copy of the regulations contained in this subpart and inform the court or other authority that the demand has been, or is being, as the case may be, referred for the prompt consideration of the appropriate NRC official and shall respectfully request the court or authority to stay the demand pending receipt of the requested instructions. In the event that an immediate demand for production or disclosure is made in circumstances which would preclude the proper designation or appearance of a U.S. or NRC attorney on the employee's behalf, the employee shall respectfully request the demanding authority for sufficient time to obtain advice of counsel.

[55 FR 33649, Aug. 17, 1990]

### § 9.204 Procedure in the event of an adverse ruling.

If the court or other judicial or quasi-judicial authority declines to stay the effect of the demand in response to a request made in accordance with § 9.203 pending receipt of instructions, or if the court or other authority rules that the demand must be complied with irrespective of instructions not to produce the material or disclose the information sought, the employee

**Pt. 10**

**10 CFR Ch. I (1–1–06 Edition)**

upon whom the demand has been made shall respectfully decline to comply with the demand, citing these regulations and *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

10450, 3 CFR parts 1949–1953 COMP., p. 936, as amended; E.O. 10865, 3 CFR 1959–1963 COMP., p. 398, as amended; 3 CFR Table 4.; E.O. 12968, 3 CFR 1995 COMP., p.396.

SOURCE: 47 FR 38676, Sept. 2, 1982, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 10 appear at 70 FR 30897, May 31, 2005.

**PART 10—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO RESTRICTED DATA OR NATIONAL SECURITY INFORMATION OR AN EMPLOYMENT CLEARANCE**

**Subpart A—General Provisions**

**Subpart A—General Provisions**

**Sec.**

- 10.1 Purpose.
- 10.2 Scope.
- 10.3 [Reserved]
- 10.4 Policy.
- 10.5 Definitions.

**§ 10.1 Purpose.**

(a) This part establishes the criteria, procedures, and methods for resolving questions concerning:

(1) The eligibility of individuals who are employed by or applicants for employment with NRC contractors, agents, and licensees of the NRC, individuals who are NRC employees or applicants for NRC employment, and other persons designated by the Deputy Executive Director for Information Services and Administration and Chief Information Officer of the NRC, for access to Restricted Data pursuant to the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, or for access to national security information; and

(2) The eligibility of NRC employees, or the eligibility of applicants for employment with the NRC, for employment clearance.

(b) This part is published to implement the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, Executive Order 10865, 25 FR 1583 (February 24, 1960) Executive Order 10450, 18 FR 2489 (April 27, 1954), and Executive Order 12968, 60 FR 40245 (August 2, 1995).

[64 FR 15641, Apr. 1, 1999]

**§ 10.2 Scope.**

The criteria and procedures in this part shall be used in determining eligibility for NRC access authorization and/or employment clearance involving:

(a) Employees (including consultants) of contractors and agents of the Nuclear Regulatory Commission and applicants for employment;

(b) Licensees of the NRC and their employees (including consultants) and applicants for employment;

**Subpart B—Criteria for Determining Eligibility for Access to Restricted Data or National Security Information or an Employment Clearance**

- 10.10 Application of the criteria.
- 10.11 Criteria.
- 10.12 Interview and other investigation.

**Subpart C—Procedures**

- 10.20 Purpose of the procedures.
- 10.21 Suspension of access authorization and/or employment clearance.
- 10.22 Notice to individual.
- 10.23 Failure of individual to request a hearing.
- 10.24 Procedures for hearing and review.
- 10.25 NRC Hearing Counsel.
- 10.26 Appointment of Hearing Examiner.
- 10.27 Prehearing proceedings.
- 10.28 Conduct of hearing.
- 10.29 Recommendation of the Hearing Examiner.
- 10.30 New evidence.
- 10.31 Actions on the recommendations.
- 10.32 Recommendation of the NRC Personnel Security Review Panel.
- 10.33 Action by the Deputy Executive Director for Information Services and Administration and Chief Information Officer.
- 10.34 Action by the Commission.
- 10.35 Reconsideration of cases.

**Subpart D—Miscellaneous**

- 10.36 Terminations.
- 10.37 Attorney representation.
- 10.38 Certifications.

AUTHORITY: Secs. 145, 161, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); E.O.